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Thelma B. Stanton v. James Lawrence Stanton : Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THELMA B. STANTON, Plaintiff-Respondent,	)	
vs.	)	CASE NO. 14268
JAMES LAWRENCE STANTON, Defendant-Appellant.	)	

RESPONDENT'S PETITION FOR REHEARING AND SUPPORTING BRIEF

Appeal From a Judgment of the District Court
of Salt Lake County
Honorable James S. Sawaya, Judge

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PETITION FOR REHEARING

Thelma B. Stanton, plaintiff and respondent herein, respectfully petitions the court for a rehearing, on the following grounds:

1. The court's decision evades the mandate of the United States Supreme Court and violates the Supremacy Clause of Article VI, United States Constitution.

2. The majority of the court failed to follow the law of the case as established in the decision of the Supreme Court of the United States.

3. The court ignored the stipulation of the parties as

to the issue to be determined in this appeal.

4. The court incorrectly assumed that the legislature had set the age of majority for purposes of support in divorce proceedings.

5. The court incorrectly described the original decree as providing for support of "minor" children.

6. The court's reversal and remand deprives plaintiff-respondent of costs awarded to her by the United States Supreme Court.

7. Justice Ellett should have disqualified himself in this case.

BRIEF IN SUPPORT OF PETITION

NATURE OF CASE

This was an appeal from a judgment of the District Court of Salt Lake County awarding plaintiff-respondent $2,700, interest, and costs, by virtue of child support that had accrued after the parties' daughter had attained the age of 18 years.

DISPOSITION ON APPEAL

The court in its decision on appeal held that the child support obligation of the defendant, James Lawrence Stanton, ended when his daughter reached the age of 18 years. The court refused to decide the age of majority that applies

to both males and females in divorce proceedings. It reversed the judgment of the trial court and awarded costs to defendant-appellant.

STATEMENT OF FACTS

On November 29, 1960, Honorable A. H. Ellett, then Judge of the District Court of Salt Lake County, entered a Decree of Divorce which awarded to Mrs. Stanton the care and custody of the parties' two children, and contained the following provision with respect to support and alimony:

> Defendant is ordered to pay to plaintiff the sum of $300 per month as child support and alimony, $100 per month for each child as child support and $100 per month as alimony, to be paid on or before the first day of each month through the office of the Salt Lake County Clerk.

On May 22, 1973, Mrs. Stanton filed a motion for entry of judgment against Mr. Stanton for $2,700 which represented support money for their daughter since her 18th birthday. The trial court denied the motion on the ground that 15-2-1 Utah Code Annotated 1953 set the age of majority for females at 18 years, and that the support obligation for the daughter terminated on her 18th birthday. This court upheld the trial court's ruling in Stanton v. Stanton, 30 Utah 2d 315, 517 P.2d 1010 (1974).

Mrs. Stanton appealed the decision to the Supreme Court of the United States, and on April 15, 1975, that court reversed the judgment, holding that 15-2-1 Utah Code Annotated 1953, in the context of divorce decreed support obligations, was unconstitutional because it denied equal protection of the laws in contravention of the Fourteenth Amendment to the United States Constitution. Stanton v. Stanton, 421 U.S. 7, 95 S.Ct. 1373, 43 L.Ed.2d 688 (1975). In deciding the matter, the United States Supreme Court first disposed of the contentions that the support issue was moot and that Mrs. Stanton lacked standing, then said:

> We therefore conclude that under any test--compelling state interests, or rational basis, or something in between--§15-2-1, in the context of child support, does not survive an equal protection attack. In that context, no valid distinction between male and female may be drawn.

The court then held that a determination of the age of majority for the purposes of divorce support obligations was a matter for the Utah courts and remanded the case "for further proceedings not inconsistent with this opinion."

This court refused to decide the case when first remanded by the United States Supreme Court, and sent it to the District Court of Salt Lake County for further proceedings.

In the district court the parties stipulated "that the only matter for resolution was whether, in the context of divorce-decreed child support obligations, children attain their majority at age 18 or at age 21", and that the plaintiff was entitled to judgment if the age of majority is 21 years.

The district court decided that for purposes of child support, children attain their majority at age 21, granted plaintiff's motion, and entered judgment for $2,700 past-due support money, $508.80 interest, and $437.38 awarded to her as costs by the United States Supreme Court.

This court reversed, holding that the establishment of the age of majority is a matter for the legislature. It refused to rule that a single age of majority applied to both men and women, taking the position that Mrs. Stanton did not have standing to raise the question with respect to male children.

ARGUMENT

I

THE COURT'S DECISION EVADES THE MANDATE OF THE UNITED STATES SUPREME COURT AND VIOLATES THE SUPREMACY CLAUSE OF ARTICLE VI, UNITED STATES CONSTITUTION.

In the first appeal of this case, Stanton v. Stanton, 36 Utah 2d 315, 517 P.2d 1010 (1974), this court rejected Mrs.

Stanton's contention that the application of different ages to male and female children for the purposes of divorce-decreed support violates the equal protection of the laws as guaranteed by Amendment XIV, United States Constitution. The court took the position that the classification was reasonable, that the statute was not unconstitutional, and that if any change was made in the age of support the change should be made by the legislature. The difference between males and females was thought sufficient to justify different treatment for purposes of divorce support.

In reversing, the United States Supreme Court said (at 421 U.S. 14-16):

> The test here, then, is whether the difference in sex between children warrants the distinction in the appellee's obligation to support that is drawn by the Utah statute. We conclude that it does not. It may be true, as the Utah court observed and is argued here, that it is the man's primary responsibility to provide a home and that it is salutary for him to have education and training before he assumes that responsibility; that girls tend to mature earlier than boys; and that females tend to marry earlier than males. The last mentioned factor, however, under the Utah statute loses whatever weight it might otherwise have, for the statute states that "all minors obtain their majority by marriage"; thus minority, and all that goes with it, is abruptly lost by marriage of a person of either sex at whatever tender age the marriage occurs.

Notwithstanding the "old notions" to which the Utah court referred, we perceive nothing rational in the distinction drawn by §15-2-1 which, when related to the divorce decree, results in the appellee's liability for support for Sherri only to age 18 but for Rick to age 21. This imposes "criteria wholly unrelated to the objective of that statute." A child male or female, is still a child. No longer is a female destined solely for the home and the rearing of the family, and only the male for the marketplace in the world of ideas. [Citation omitted.] Women's activities and responsibilities are increasing and expanding. Coeduation is a fact, not a rarity. The presence of women in business, in the professions, in government and, indeed, in all walks of life where education is a desirable, if not always a necessary, antecedent is apparent and a proper subject of judicial notice. If a specified age of minority is required for the boy in order to assure him parental support while he attains his education and training, so, too, it is for the girl. To distinguish between the two on educational grounds is to be self-serving: if the female is not to be supported so long as the male, she hardly can be expected to attend school as long as he does, and bringing her education to an end earlier coincides with the role typing society has long imposed. And if any weight remains in this day to the claim of earlier maturity of the female, with the concomitant inference of absence of need for support beyond 18, we fail to perceive its unquestioned truth or its significance, particularly when marriage, as the statute provides, terminates minority for a person of either sex.

* * * *

We therefore, conclude that under any test--compelling state interest, or rational basis, or something in between--§15-2-1, in the context of child support, does not survive an equal protection attack. In that context, no valid distinction between male and female may be drawn.

* * * *

> The judgment of the Supreme Court of Utah is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

Notwithstanding the decision of the United States Supreme Court, the majority of this court walked the same ground again. It held that it was the function of the legislature to make a determination as to the age of majority, just as it had before. It reiterated its view that a statute is presumed to be valid unless it clearly appears to be in conflict with some provision of the Constitution, notwithstanding a direct holding by the United States Supreme Court that the statute is unconstitutional.

This court said:

> If in a proper case it could be held that it is a denial of the equal protection of the law to recognize that there is a difference in age when the sex is mature, would it not also be a denial of equal protection to enable a female to marry at age 14 while the male in order to marry must be 16?

This amounts to a clear rejection of the power of the United States Supreme Court to make a determination, as it did in this case, that the statute in question was unconstitutional in the context of divorce decreed support obligations.

It may be true, as the majority opinion says, that "to judicially hold that males and females attain their maturity

at the same age is to be blind to the biological facts of life," but is also true that to judicially hold that this court has the power to overrule a determination of the Supreme Court of the United States is to be "blind" to the historical and political facts of life.

One of the concurring opinions takes issue with the mandate of the United States Supreme Court saying that the direction that the matter should be resolved by the Utah courts, "historically has not been considered as an acceptable legal concept by our state juridicary."

And the majority opinion states that "the oath we took when chosen as justices of the Supreme Court of Utah forbids us to encroach on the duties and functions of the legislature." We have looked in vain for any such "forbidding" in the oath of office prescribed for public officers in Article IV, Section 10, Utah Constitution:

> I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this state, and that I will discharge the duties of my office with fidelity.

The Constitution of the United States, which the justices of the Supreme Court swear to uphold, includes the Supremacy Clause of Article VI:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. (Emphasis added.)

For 160 years it has been settled law that this Supremacy Clause of the United States Constitution operates on the judiciary as well as upon the legislature, and that state courts are bound by decisions of the United States Supreme Court with respect to interpretations of federal law. Martin v. Hunter's Lessee, 1 Wheat 304, 4 L.Ed. 97 (1816).

This court seems purposely to have evaded the mandate of the United States Supreme Court. Although directed to determine the age at which divorce-decreed support obligations end for both males and females the court has refused to carry out the mandate of the United States Supreme Court. Moreover, it has left the "equal protection" question just where it found it. The court majority holds that support obligations for females end at age 18, saying that it is not necessary to make a determination for males. In doing this it relies upon some propositions that were regarded as invalid by the United States Supreme Court, as is pointed out in the argument below.

II

THE MAJORITY OF THE COURT FAILED TO FOLLOW THE LAW OF THE CASE AS ESTABLISHED IN THE DECISION OF THE SUPREME COURT OF THE UNITED STATES.

Before the United States Supreme Court, Mr. Stanton took the positions that the support issue was moot because at the time of the argument the daughter had reached the age of 21 years; and that Mrs. Stanton lacked standing to raise the equal protection issue under the Constitution of the United States. Both of these arguments were explicitly rejected.

Additionally, it was argued that because of a stipulation that was entered into by the parties with respect to the decree to be entered in the case, there was somehow an agreement that support would end for the daughter when she achieved the age of 18 years. This was also rejected, the United States Supreme Court saying:

> We see nothing in the stipulation itself that is directed to the question when majority is reached for purposes of support payments or that smacks of waiver.

Notwithstanding these holdings by the United States Supreme Court, this court took contrary positions. It stated that the statute holding girls attain their majority at age

18 was constitutional, contrary to the United States Supreme Court. It held that the "constitutionality of the statute can be raised only by one who had an interest in the lawsuit," and stated that neither of the parties in this case had an interest in the lawsuit, also contrary to the holding of the United States Supreme Court. It held that the "judge and the parties to this proceeding all assumed that the decree meant that the 'father should furnish the support for the son until he reached 21 and for the daughter until she reached age 18,'" again contrary to the holding of the United States Supreme Court with respect to the stipulation.

In short, the majority decision is an act of judicial muscle flexing aimed at demonstrating to the United States Supreme Court that the Supreme Court of Utah is free to make its own law, unfettered by the federal judiciary. In carrying out the demonstration it has lost sight of its duty to the litigants and the rule of law.

III

THE COURT IGNORED THE STIPULATION OF THE PARTIES AS TO THE ISSUE TO BE DETERMINED IN THIS APPEAL.

In advocating equity, one of the concurring judges correctly observed that this is a controversy between two parties, but having so observed, disregarded the issues tried by those

parties and suggested the application of "equity and good conscience" to decide the case.

But the defendant did not appear as his own counsel. He was well represented, and in the district court the parties stipulated that the only issue in the case was whether the age of majority was 18 or 21. No equitable questions were raised or decided, and no equitable questions are before this court.

If "equity" is a factor, the court should consider the lack of equity in requiring a litigant to go to the United States Supreme Court twice in order to enforce a legitimate claim to $2,700.

IV

THE COURT INCORRECTLY ASSUMED THAT THE LEGISLATURE HAD SET THE AGE OF MAJORITY FOR PURPOSES OF SUPPORT IN DIVORCE PROCEEDINGS.

In the majority opinion and in one of the concurrences it is emphasized and re-emphasized that setting of the age of majority for the purposes of this action is a task for the legislature and not for the courts. The statement is patently wrong.

There is nothing in the divorce statutes which prescribes

the age at which child support money cease. It is provided in 30-3-5 Utah Code Annotated 1953:

> When a Decree of Divorce is made, the court may make such orders in relation to the children, property and parties, and the maintenance of the parties and children, as may be equitable. * * *

Barely six months before the decision in this case, this court considered the interpretation of "children" as used in the divorce statute, and in Dehm v. Dehm, 545 P.2d 525 (Utah 1976) stated:

> Since the term "children" has been neither limited nor defined by the legislature in Section 30-3-5, a court in a divorce proceeding has the authority to order support for "children" so long as there is a legal duty on the part of the parents to so provide.

Understandably, the court in this case made no reference to Dehm v. Dehm, although the decision was pointed out to the court in both the brief and in oral argument.

The age at which support begins and ends in divorce proceedings is and always has been judge-made law, and the court abdicated its responsibility in attempting to attribute the problem to the legislature.

V

THE COURT INCORRECTLY DESCRIBED THE ORIGINAL DECREE AS PROVIDING FOR SUPPORT OF "MINOR" CHILDREN.

In the majority opinion, Justice Ellett states that under the original Decree of Divorce the defendant was ordered to pay plaintiff $100 per month support payments for each of the "minor children" of the parties. A like statement is found in one of the concurring opinions. But the fact is that the decree with respect to support money did not refer to "minor" children. It said:

> Defendant is ordered to pay to plaintiff the sum of $300.00 per month as child support and alimony, $100.00 per month for each child as child support and $100.00 per month as alimony * * *

The use of this language in the support portion of the decree is enlightening, inasmuch as in the custody portion of the decree the court did refer to "minor children." There seems to have been a recognition, at that time, that there was a difference in the age at which parental custody ceases and the age to which parental support obligations continue.

VI

THE COURT'S REVERSAL AND REMAND DEPRIVES PLAINTIFF-RESPONDENT OF COSTS AWARDED TO HER BY THE UNITED STATES SUPREME COURT.

On May 13, 1975, the United States Supreme Court issued its mandate to this court, remanding the case "for further proceedings in conformity with the opinion of this court." The

mandate also contained the following paragraph:

> IT WAS FURTHER ORDERED that Thelma B. Stanton recover from James Lawrence Stanton, Jr., Four Hundred Thirty-Seven Dollars and Thirty-Eight Cents ($437.38) for her costs herein expended.

The parties and the trial court all recognized that the plaintiff and respondent was entitled to recover those costs, and the costs were included in the judgment of the court below. But this court simply reversed the trial court and awarded costs to the appellant. It made no provision for the payment of the costs awarded by the Supreme Court and to that extent directly overruled the United States Supreme Court's order.

VII

JUSTICE ELLETT SHOULD HAVE DISQUALIFIED HIMSELF IN THIS CASE.

At the time the original decree was entered, Justice Ellett was a judge of the District Court of Salt Lake County; he heard the divorce and entered the decree. When the case was first appealed to this court Justice Ellett disqualified himself from consideration of the matter, apparently because of his prior participation. When the case was again appealed, counsel assumed that Justice Ellett would disqualify himself again, but when Justice Ellett took the bench on the day of

argument it appeared to be too late to raise the question of disqualification.

Justice Ellett's sitting on the case becomes particularly important because in the majority opinion Justice Ellett seems to have become a witness as to occurrences at the trial:

> The judge and the parties to this proceeding all assumed that when the decree stated that the father should be the one to furnish the support for the children during their minority it meant that the father should furnish the support for the son until he reached 21 and for the daughter until she reached age 18.

CONCLUSION

When this case was decided by the United States Supreme Court it was remanded to this court with a clear direction that the age of majority, in the context of child support in divorce proceedings, had to be the same for both males and females. This court, however, has refused to follow the direction of the United States Supreme Court and has rejected points established as the law of the case--standing to sue, among others.

Not only did this court fail to follow the law as set down by the United States Supreme Court, it failed to follow its own precedents with respect to the meaning of "children" in the divorce code. Moreover, in reversing, it deprived

plaintiff and respondent of costs to which she was entitled under any theory of the case.

The court should grant the petition for rehearing, set the matter for reargument, and affirm the decision of the District Court of Salt Lake County. In the rehearing of the case, Justice Ellett should disqualify himself because of his participation as the trial judge.

Respectfully submitted,

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